

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

CASE NO. 05-367-3P3

JOHN W. SCHNEIDER

Debtor.

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**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

This Case is before the Court upon Debtor's Objection to Claim Two (2) of Ellen E. Schneider ("Claimant"). After a hearing held on September 28, 2005, the Court makes the following Findings of Fact and Conclusions of Law:¹

FINDINGS OF FACT

1. Debtor filed his Chapter 13 petition in bankruptcy on January 12, 2005.

2. On February 10, 2005, Claimant filed Claim Two (2) in the amount of \$135,000. Claim Two (2) consists of the sums of \$125,000.00, for Claimant's interest in the former marital home she shared with Debtor and \$10,000.00 for her interest in a joint checking account previously held between her and the Debtor.

3. On June 23, 2005, Debtor objected to Claim Two (2) upon the basis that the proof of claim contained various deficiencies and that Claimant had filed an untimely response to the objection to claim.

4. On August 2, 2005, Claimant filed a response to Debtor's Objection to Claim Two (2).

5. Claimant is the former wife of the Debtor. Pursuant to the terms of a marital settlement approved by the Fifth Judicial Circuit Court, in Citrus County, Florida, Debtor was to pay Claimant \$125,000.00 for her interest in the former marital

home within forty-five (45) days of December 22, 2004. [C. Ex. 1] The home was acquired jointly during their marriage from marital funds. Sole title to the former marital home was transferred to Debtor pursuant to the provisions of the final judgment. [C. Ex. 1]

6. The marital settlement also required the Debtor to pay to Claimant the amount of \$10,000.00 as her share from a joint checking account. [C. Ex. 1]

7. Claimant attached all the necessary supporting documentation to her proof of claim. This documentation includes the: (1) Order Approving Report of Findings and Recommendations of the General Magistrate on Petition for Dissolution of Marriage and Final Judgment of Dissolution of Marriage, (2) Marital Settlement Agreement for Dissolution of Marriage and (3) a copy of Debtor's SunTrust Account Statement.

8. Pursuant to Debtor's plan Claimant would only receive approximately \$5,130.00 over the sixty (60) month life of the plan.

CONCLUSIONS OF LAW

"It is well accepted that the bankruptcy court is guided by the principles of equity, and that the court will act to assure that "fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done." Pepper v. Litton, 308 U.S. 295, 305, 60 S.Ct. 238, 244, 84 L.Ed. 281 (1939). "Thus in a bankruptcy case, amendment to a claim is freely allowed where the purpose is to cure a defect in the claim as originally filed, to describe the claim with greater particularity or to plead a new theory of recovery on the facts set forth in the original claim." In re International Horizons, Inc., 751 F.2d 1213,1216 (11 th Cir. 1983). Based upon the Eleventh Circuit's decision in Horizons, it is clear that a court's final determination as to how a claim shall be treated should not be based upon mere procedural technicalities. Id.

Rule 3001(a) requires that a proof of claim "conform substantially" to the appropriate Official Form, which is Form 10. Although Claimant failed to properly fill out some portions of Form 10, she did attach the necessary documentation in support of her claim. Based upon the supporting documentation, which included the (1) Order Approving Report of Findings and Recommendations of the General Magistrate on Petition for Dissolution of Marriage

¹ Pursuant to Federal Bankruptcy Rule of Procedure 3007, "If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding." Although the relief sought would be more appropriately dealt with as an adversary proceeding, neither of the parties raised that issue to the Court. Thus, the Court will proceed to deal with the instant case as an Objection to Claim.

and Final Judgment of Dissolution of Marriage, (2) Marital Settlement Agreement for Dissolution of Marriage and (3) a copy of Debtor's SunTrust Account Statement, it is clear the Debtor or any other interested party was provided with sufficient information as to the basis and amount of the claim. Therefore, the Court finds that pursuant to Rule 3001(a), Claim Two (2) does substantially conform to Form 10 and no amendment to Claim Two (2) is necessary.

Debtor also argues that Claim Two (2) should fail based upon the fact that there was not a timely response to the objection to claim. However, this argument is without merit and fails. Although objections to claims contain a thirty (30) day negative notice provision, if a response is filed prior to the Court entering an order sustaining a movant's objection, the Court automatically sets a hearing on the matter. Based upon the above, as well as the evidence presented at trial, it is clear to the Court that the Claimant has a legitimate claim that is entitled to be dealt with on its merits.

Property of the Estate

A bankruptcy estate is "comprised of all the property in which a debtor has a "legal interest" or "equitable interest" as of the petition date." In re Woolum, 279 B.R. 865 (Bankr. M.D. Fla. 2002), 11 U.S.C. § 541(a)(1). "The terms "legal interest" and "equitable interest" in property are construed broadly." Id. Further, a debtor's interest in property is to be determined by state law. In re Scanlon, 239 F.3d 1195, 1197 (11th Cir. 2001).

Constructive Trust

Claimant asserts that Claim Two (2) should be held to be a secured claim under a constructive trust theory. "A constructive trust generally arises to restore property to its rightful owner and to prevent unjust enrichment when it is against equity for a person to retain property obtained by fraud or other questionable means." Woolum, 279 B.R. at 869-870. A constructive trust requires the following to be shown by a claimant: "(1) a promise, express or implied, (2) transfer of the property and reliance thereon, (3) a confidential relationship and (4) unjust enrichment." Provence v. Palm Beach Taverns, Inc., 676 So. 2d 1022, 1025 (Fla. 4th DCA 1996).

Claimant asserts that the elements of a constructive trust have been met. Based upon the evidence presented, the Court agrees. The marital settlement agreement contains an express promise by

the Debtor to pay Claimant the sum of \$125,000.00 for her interest in the former marital home and \$10,000.00 as her share from a joint checking account. In reliance upon Debtor's express promise to pay the above sums, Claimant transferred to Debtor her interest in the former marital home and joint checking account. Further, as the parties were husband and wife there was clearly a confidential relationship and there is no question that Debtor would be unjustly enriched if Claim Two (2) were to be allowed as an unsecured claim. Accordingly, the Court finds that all the elements of a constructive trust have been met.

CONCLUSION

Based upon the above, the Court finds that Claim Two (2) is entitled to be treated as a secured claim in the amount of \$135,000.00. Therefore, the Court will enter a separate order Overruling Debtor's Objection to Claim Two (2).

Dated this 6 day of February, 2006 in Jacksonville, Florida.

/s/ George L Proctor
George L. Proctor
United States Bankruptcy Judge

Copies To:
Debtor
Ellen E. Schneider
Richard A. Perry
Leon M. Boyajan
Chapter 13 Trustee
United States Trustee